

MINUTES

COURT OF APPEAL
STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT
Monday, October 1, 2001

Division One

A091255 -- The People v. Darrell Calhoun.

The judgment is affirmed. Stein, Acting P.J. We Concur: Swager, J., Marchiano, J. (Not for Publication.)

Division Five

A090584 -- Michael H. Clement v. Joel Keller et al.

As to appellant, the judgment is reversed and the matter is remanded to the trial court with directions to issue declaratory relief and to order respondent to conduct a reassessment of appellant's property for fiscal years 1992-1993 through 1995-1996, in accordance with the views expressed in this opinion. Appellant shall be awarded costs on appeal. Given Mr. Clement's lack of standing to appeal, his appeal is dismissed. Simons, J. We Concur: Jones, P.J., Stevens, J. (Not for Publication.)

A094023 -- Alyce C. Lewis v. Thomas Eugene Lewis.

The award of \$10,000 in punitive damages is ordered vacated. The judgment is otherwise affirmed. Appellant shall recover costs on appeal. Stevens, J. We Concur: Jones, P.J., Simons, J. (Not for Publication.)

A092577 -- Michelle Sidrian v. Mission Counties Insurance Agency, Inc.

The judgment is reversed. Costs on appeal are awarded to Sidrian. Jones, P.J. We Concur: Stevens, J., Simons, J. (Not for Publication.)

MINUTES

CALIFORNIA COURT OF APPEAL FIRST APPELLATE DISTRICT DIVISION ONE

Monday, October 1, 2001

The Court convened at 9:00 a.m. in its courtroom at 350 McAllister Street, Fourth Floor, San Francisco. Present: Stein, Acting P.J., Swager, J., and Marchiano, J.; N. Millner, Deputy Clerk, and court security.

- A093022 The People,
 v.
 Glen Edward White.
Cause called and argued by Tara Mulay, counsel for appellant, and David Rose, Deputy Attorney General, counsel for respondent. Cause ordered submitted.
- A090388 The People,
 v.
 Robert Hartmann, et al.
Cause called and argued by Dennis P. Riordan, counsel for appellants, and Gerald Engler, Deputy Attorney General, counsel for respondents. Cause ordered submitted.
- A094890 State of California, et al.,
 v.
 The Superior Court of San Francisco County;
 Gino Buchignani, et al.
Cause called and argued by John Daum, counsel for petitioners, and Matthew Kreeger, counsel for respondent. Cause ordered submitted.
- A092638 Frederick Tautenhahn, et al.,
 v.
 Daly City Redevelopment Agency, et al.
Cause called and argued by Frederik A. Jacobsen, counsel for appellants, and Michelle M. Kenyon, counsel for respondents. Cause ordered submitted.

A094205

Estate of Richard Edward Schulz.

Jennifer Schulz, et al.,

v.

Stephanie Miller Schulz Stewart.

Cause called and argued by John J. Cullen, counsel for appellants, and Jason E. Lee, counsel for respondent. Cause ordered submitted.

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A093009

Valley Forge Insurance Company,

v.

Mt. Hawley Insurance Company.

Cause called and argued by Bruce D. Celebreeze, counsel for appellant, and Marc J. Derewetzky. Cause ordered submitted.

Court recessed until 1:30 p.m.

MINUTES

CALIFORNIA COURT OF APPEAL
FIRST APPELLATE DISTRICT
DIVISION ONE

Monday, October 1, 2001

The Court reconvened at 1:30 p.m. in its courtroom at 350 McAllister Street, Fourth Floor, San Francisco. Present: Stein, Acting P.J., Swager, J., and Marchiano, J.; B. Robbins, Deputy Clerk; and CHP Officer T. Tam.

- A087930 The People,
 v.
 Larry Dixon.
Cause called and argued by Cynthia A. Thomas, counsel for appellant, and Seth Schalit, Deputy Attorney General, counsel for respondent. Cause ordered submitted.
- A092569 In re Frank T.
 The People,
 v.
 Frank T.
Cause called and argued by Donald T. Bergerson, counsel for appellant, and Christopher Wei, Deputy Attorney General, counsel for respondent. Cause ordered submitted.
- A092274 Karen Nishihama,
 v.
 City and County of San Francisco.
Cause called and argued by David B. Newdorf, counsel for appellant, and Bryce C. Anderson, counsel for respondent. Cause ordered submitted.
- A094064 Insurance Commissioner;
 Golden Eagle Insurance Company,
 v.
 City of Palm Springs, et al.
Cause called and argued by Erin Hallissy, counsel for appellants, and Stacey L. Pratt, counsel for respondent. Cause ordered submitted.

A093193 State Farm Mutual Automobile Insurance Company, et al.
v.
David Birnbaum, et al.;
Southern Christian Leadership Conference of Greater Los Angeles, et al.
Cause called and argued by Vanessa Wells, counsel for appellants, and Kristian
D. Whitten, Deputy Attorney General, and Mark R. Savage, counsel for
respondents. Cause ordered submitted.

A093684 Alexander Reese,
v.
Hung Kim Wong, et al.
Cause called and argued by Thomas J. LaLanne, counsel for appellant, and John
F. Hughes, counsel for respondents. Cause ordered submitted.

Court recessed until Tuesday, October 2, 2001 at 9:00 a.m.

Tuesday, October 2, 2001

Division One

A095919 --William Coertnik, et al. v. Larry John Gusto.

By the Court: Appellant having failed to pay the statutory filing fee in compliance with the rule 1(c) of the California Rules of Court, after notice having been given pursuant to rule 10(a), the appeal filed on August 7, 2001 is dismissed. Swager, Acting P.J.

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Division Two

A090429 -- Ernest M. Thayer et al. v. Wells Fargo Bank, N.A.

The judgment is reversed and the matter remanded for further proceedings consistent with this opinion. Appellant Wells Fargo is awarded costs on appeal. Kline, P.J. We Concur: Haerle, J., Ruvolo, J. (Certified for Publication.)

A094004 -- The People v. Mark Edward Vaughan.

The judgment is affirmed. Ruvolo, J. We Concur: Kline, P.J., Lambden, J. (Not for Publication.)

Division Four

A094481 -- The People v. Robert Lee Glasco.

The judgment is affirmed. Kay, J. We Concur: Reardon, Acting P.J., Sepulveda, J. (Not for Publication.)

A090825 -- Dorothy Nash et al. v. Edward R. MacDonald et al.

The judgment is reversed. Kay, J. We Concur: Reardon, Acting P.J., Sepulveda, J. (Certified for Publication.)

MINUTES

CALIFORNIA COURT OF APPEAL
FIRST APPELLATE DISTRICT
DIVISION ONE

Tuesday, October 2, 2001

The Court reconvened at 9:00 p.m. in its courtroom at 350 McAllister Street, Fourth Floor, San Francisco. Present: Stein, Acting P.J., Swager, J., and Marchiano, J.; N. Millner, Deputy Clerk; and CHP Officer T. Tam.

- A091718 Republic Indemnity Company of America, et al.,
 v.
 Lyle Martin, et al.
Cause called and argued by Judith Posner, counsel for appellants, and G. Dennis Rodgers, counsel for respondents. Cause ordered submitted.
- A091121/
A091880 Robert W. Carrau, et al.,
 v.
 Marvin Lumber and Cedar Company.
Cause called and argued by Mary Wilcox, counsel for Robert W. Carrau, et al., and James J. Ficenec, counsel for Marvin Lumber and Cedar Company. Cause ordered submitted.
- A093139 Jack Gardner, et al.,
 v.
 County of Sonoma, et al.
Cause called and argued by Leslie Perry, counsel for appellants, and Sue A. Gallagher, Deputy County Counsel, counsel for respondent. Cause ordered submitted.
- A092539/
A091762/
A092552/
A093075 Cody Fox, et al.,
 v.
 Charles McLaughlin, et al.
Cause called and argued by Bertrand F. Ithurburn, counsel for appellants, and Mark W. Hudson, counsel for respondents. Cause ordered submitted.

Court adjourned.

Tuesday, October 2, 2001 (continued)

Division Five

A093246 -- In re Marriage of Mary Jo and Warren Foltz.

The order is affirmed. Jones, P.J. We Concur: Stevens, J., Simons, J.
(Not for Publication.)

A093519 -- Khanm Kim Luc v. Donald Chiu, Charles G. Kinney.

The orders are affirmed. Stevens, J. We Concur: Jones, P.J., Simons, J.
(Not for Publication.)

A091745 -- The People v. Dwayne Keyonn Swearington.

The judgment is affirmed. Stevens, J. We Concur: Jones, P.J., Simons, J.
(Not for Publication.)

Wednesday, October 3, 2001

Division Two

A093614 -- In re Tina G., a Person Coming Under the Juvenile Court Law. Sonoma County Human Services Department v. George G.

The orders are affirmed. Respondent's motion to augment the record on appeal is denied. Kline, P.J. We Concur: Haerle, J., Ruvolo, J. (Not for Publication.)

Thursday, October 4, 2001

Division One

A093496 -- In re Lance B. et al., a Person Coming Under the Juvenile Court Law. Contra Costa County Social Service Department v. Marcelino B.

The challenged order of the juvenile court, including the ultimate order terminating parental rights and referring the matter to an adoption agency, are affirmed. Marchiano, J. We Concur: Stein, Acting P.J., Swager, J. (Not for Publication.)

A094890 -- State of California, et al. v. The Superior Court of San Francisco County; Gino Buchignani, et al., R.P.I.

Respondent superior court erred when it denied the State's motion for summary judgment or summary adjudication against the Cloverdale plaintiffs on the sole ground that the motion would not completely dispose of cause of action within the meaning of section 437c, subdivision (f)(1). Therefore, let a peremptory writ of mandate issue commanding the superior court to set aside its April 25, 2001 order denying the motion and to instead reconsider the motion and any opposition to it. Petitioners shall recover their costs. Petitioner shall serve a copy of this opinion on all parties to San Francisco Court No. BC 312 236. Stein, Acting P.J. We Concur: Swager, J., Marchiano, J. (Not for Publication.)

A094064 -- Harry Low, as Insurance Commissioner, etc. v. Golden Eagle Insurance Company; City of Palm Springs, et al.

Based on the facts known to bond counsel prior to inception of the Golden Eagle policy, counsel should have reasonably foreseen that their acts or omissions could lead to a claim or suit for purposes of the prior knowledge exclusion. The claim was properly denied and the judgment is affirmed. Marchiano, J. We Concur: Stein, Acting P.J., Swager, J. (Not for Publication.)

A095993 -- Elizabeth Sparks v. Scott R. Nicholson.

By the Court: Appellant having failed to pay the statutory filing fee in compliance with rule 1(c) of the California Rules of Court, after notice having been given pursuant to rule 10(a), the appeal filed on August 15, 2001 is dismissed. Stein, Acting P.J.

Thursday, October 4, 2001 (continued)

**A092638 -- Frederick A. Tautenhahn, et al. v. Daly City
Redevelopment Agency, et al.**

The order dismissing the action is affirmed. Stein, Acting P.J. We Concur:
Swager, J., Marchiano, J. (Not for Publication.)

Thursday, October 4, 2001 (continued)

A093009 -- Valley Forge Insurance Company v. Mt. Hawley Insurance Company.

The judgment is reversed and the matter is remanded to the trial court. Appellant shall recover its costs on appeal. Marchiano, J. We Concur: Stein, Acting P.J., Swager, J. (Not for Publication.)

Division Two

A096344 -- American Pacific Mortgage dba Big Valley Mortgage, and Kevin Yost v. The Superior Court of Solano County; Dena Wilson, R.P.I.

By the Court: The petition for writ of mandate and request for immediate stay are denied. Haerle, Acting P.J.

Division Five

A093575 -- The People v. Freda Herbert.

The judgment is modified by (1) striking the \$800 restitution fine and substituting the \$100 restitution fine imposed on January 26, 1998, which remains in force, and (2) correcting the amount of the parole revocation restitution fine to \$200. In all other respects, the judgment is affirmed. The trial court is directed to prepare a corrected abstract of judgment for transmittal to the Department of Corrections. Stevens, J. We Concur: Jones, P.J., Simons, J. (Not for Publication.)

A090175 -- The People v. Mario Lewis Stanford.

The judgment is affirmed. Jones, P.J. We Concur: Stevens, J., Simons, J. (Not for Publication.)

Friday, October 5, 2001

Division One

A092569 - In re Frank T., a Person Coming Under the Juvenile Court Law. The People v. Frant T.

The jurisdictional and dispositional orders are affirmed. Stein, Acting P.J. We Concur: Swager, J., Marchiano, J. (Not for Publication.)

Division Two

A092156 -- Corinne E. Black, as Trustee, etc. v. Financial Freedom Senior Funding Corporation, et al.

We reverse the entry of summary judgment in favor of respondents. Costs on appeal are awarded to the Blacks. Haerle, J. We Concur: Kline, P.J., Lambden, J. (Certified for Publication.)

A089591 -- The People v. Gerard Lee Jones.

The judgment is affirmed. Ruvolo, J. We Concur: Kline, P.J., Lambden, J. (Not for Publication.)

A091493 -- The People v. Douglas Alvin Page.

The judgment is affirmed. Kline, P.J. We Concur: Lambden, J., Ruvolo, J. (Not for Publication.)

A091763 -- Gregory Rosalsky, a Minor, etc., et al. v. California Insurance Group et al.

For the reasons above stated, the judgment is reversed and the trial court is directed to enter judgment in favor of appellants. Appellants shall recover costs on appeal. Lambden, J. We Concur: Kline, P.J., Ruvolo, J. (Not for Publication.)

Friday, October 5, 2001 (continued)

Division Four

A091598 -- The People v. Keith Moore.

The judgment is affirmed. Sepulveda, J. We Concur: Reardon, Acting P.J., Kay, J. (Not for Publication.)

A094059 -- In re Marriage of Richard Olmstead and Kathleen Doyle.

The order under review is reversed insofar as it awarded attorney fees incurred by respondent on the previous appeal. In all other respects the order is affirmed. Each party will bear his or her own costs. Sepulveda, J. We Concur: Reardon, Acting P.J., Kay, J. (Not for Publication.)

Division Five

A094248 -- Joseph Debro v. The Los Angeles Raiders.

The judgment is affirmed. Stevens, J. We Concur: Jones, P.J., Simons, J. (Certified for Partial Publication.)

Tuesday, October 9, 2001

Division Two

A092781 -- The People v. Keith Ray Curtis.

The judgment is affirmed. Ruvolo, J. We Concur: Haerle, Acting P.J., Lambden, J. (Not for Publication.)

A094095 -- In re Nicholas H., a Person Coming Under the Juvenile Court Law. Alameda County Social Services Agency v. Kimberly H.

The January 8, 2000, order is reversed and this case is remanded to the juvenile court so that it can reconsider the issues presented in light of our decision in *Nicholas I.* Haerle, J. We Concur: Kline, P.J., Lambden, J. (Not for Publication.)

A075328/A076586 -- In re Marriage of Susann Margreth Bonds and Barry Lamar Bonds.

We reverse that part of the judgment finding that Barry did not transmute the Murietta, Pennsylvania, and Atherton properties into community property. We remand for the trial court to divide the community property consistent with this opinion and to redetermine the issue of the duration of spousal support. Sun is awarded costs on appeal. Lambden, J. We Concur: Kline, P.J., Ruvolo, J. (Not for Publication.)

A090411 -- The People v. Rex Olisuru Ogunniyi.

The judgment is affirmed. Kline, P.J. We Concur: Haerle, J., Ruvolo, J. (Not for Publication.)

Tuesday, October 9, 2001 (continued)

Division Four

A090680 -- Michelle Birschtein v. New United Motor Manufacturing, Inc.

The judgment of the superior court is reversed and the cause is remanded for further proceedings consistent with this opinion. Appellant to recover her costs. Kay, J. We Concur: Sepulveda, Acting P.J., Chiantelli, J.* (Certified for Publication.)

*Judge of the San Francisco Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

A090889 -- Willie M. Green v. Dillingham Construction N.A., Inc.

The judgment is affirmed. Sepulveda, J. We Concur: Reardon, Acting P.J., Stein, J.* (Not for Publication.)

*Associate Justice of Division One of the First Appellate District, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

MINUTES
CALIFORNIA COURT OF APPEAL
FIRST APPELLATE DISTRICT
DIVISION FOUR
Tuesday, October 9, 2001

The Court convened at 9:30 a.m. in its courtroom at 350 McAllister Street, 4th Floor, San Francisco. Present: Reardon, Acting P.J., Sepulveda, J. and Kay, J.; Pamela Aguilar, Deputy Clerk; CHP Officer Shelley Aldridge, Bailiff.

- A092058 People
 v.
 Jose Pepe Vargas
Cause called. Kenneth Noel argued for appellant Vargas via telephone conferencing. Deputy Attorney General John Deist argued for respondent. Cause submitted.
- A093687 Mid-Century Insurance Exchange
 v.
 Daimler Chrysler Corporation et al.
Cause called. Patrick Becherer argued for respondents Chrysler et al. Daniel G. Maguire argued for appellant. Cause submitted.
- A093007 Michael Edelstein et al.
 v.
 Patricia Fado
Cause called. J. Michael Schaefer argued for appellants Edelstein et al. K. Scott Dickey argued for respondent. Cause will be submitted later upon order of this Court.
- A093454 Anne Marie N.
 v.
 City and County of San Francisco
Cause called. Richard J. Reilly argued for appellant Anne Marie N. Margarita Gutierrez argued for respondent. Cause submitted.

The Court adjourned at 10:41 a.m.

Tuesday, October 9, 2001 (continued)

Division Five

A093725 -- The People v. Brad Lee Houghton.

The judgment is affirmed. Simons, J. We Concur: Jones, P.J., Stevens, J.
(Not for Publication.)

**A092657 -- Stephen Tessler et al. v. California Department of
Corrections et al.**

The order denying the motion to strike is affirmed. Jones, P.J. We Concur:
Stevens, J., Simons, J. (Not for Publication.)

Wednesday, October 10, 2001

Division One

A093269 -- In re Johnny D., a Person Coming Under the Juvenile Court Law. Alameda County Social Services Agency. v. Willena J.

The order of dismissal is vacated, and the matter is remanded with directions that the court holds a noticed hearing on the issue of dismissal of dependency. Stein, Acting P.J. We Concur: Swager, J., Marchiano, J. (Not for Publication.)

A090804 -- The People v. Felimon Franco Torres.

The judgment is affirmed. Stein, Acting P.J. We Concur: Swager, J., Marchiano, J. (Not for Publication.)

Division Three

A094629 -- In re Michelle M., a Person Coming Under the Juvenile Court Law. The People v. Michelle M.

The order adjudicating appellant a continued ward of the court and placing her outside the family home is affirmed. McGuiness, P.J. We Concur: Corrigan, J., Parrilli, J. (Not for Publication.)

Division Five

A093125 -- John Allen v. Kevin McLaughlin et al.

The order of October 2, 2000 "granting motion to modify decision [] and awarding costs" is affirmed. The order of August 29, 2000, is reversed to the extent it denies appellants a reasonable attorney fee. The matter is remanded for the prevailing party on appeal and are therefore awarded costs on appeal. Jones, P.J. We Concur: Stevens, J., Simons, J. (Not for Publication.)

A093799 -- In re Steven Caswell, on Habeas Corpus.

The judgment is reversed. Stevens, J. We Concur: Jones, P.J., Simons, J. (Certified for Publication.)

Wednesday, October 10, 2001 (continued)

A096279 -- Ming F. Woo et al. v. The Superior Court of San Francisco County, Eric Lien et al., R.P.I.

By the Court: The court has considered the record, the petition and real parties' opposition to the petition. Pending resolution of the appeal in case No. A094960, all proceedings upon the judgment of partition, including but not limited to the sale of the subject property, in *Woo v. Lien*, San Francisco County Superior Court Action No. 305809, are hereby STAYED until further order of this court. The clerk is directed to file a copy of this order in the related appeal, case No. A094960. Jones, P.J.

Thursday, October 11, 2001

Division One

A092670 -- The People v. Thomas Eugene Ferreira.

The judgment is affirmed. Marchiano, J. We Concur: Stein, Acting P.J., Swager, J. (Not for Publication.)

A093139 -- Jack A. Gardner et al. v. County of Sonoma.

The judgment denying the petition for writ of mandate is affirmed. Each party shall bear its own costs. Marchiano, J. We Concur: Stein, Acting P.J., Swager, J. (Certified for Publication.)

A094620 -- Edward Schuler v. California Department of Motor Vehicles.

By the Court: The petition for rehearing is denied. Swager, Acting P.J.

Division Two

A093066 -- Estate of Katherine Andros, Deceased. Wells Fargo Bank, N.A. v. Athanasia Vlazakis, Rose Resnick Lighthouse For The Blind et al.

The judgment is affirmed. Costs to respondents. Kline, P.J. We Concur: Haerle, J., Ruvolo, J. (Not for Publication.)

Division Three

A096382 -- In re Rufus Brinkley, on Habeas Corpus.

By the Court: The petition for a writ of habeas corpus is denied. (McGuinness, P.J., Corrigan, J. & Parrilli, J. participating)

Thursday, October 11, 2001 (continued)

Division Three

A096412 -- Timothy McWhorter v. The Superior Court of Contra Costa County; The People, R.P.I.

By the Court: The petition for a writ of mandate is denied. Petitioner has failed to provide a record sufficient to enable informed appellate review. (See *Sherwood v. Superior Court* (1979) 24 Cal.3d 183, 186-187; Cal. Rules of Court, rule 56(c).) (McGuiness, P.J., Corrigan, J. & Parrilli, J. participating)

A093919 -- Pajaro Valley Community Health Trust v. Community Health Systems, Inc., et al.

The order denying the petition to compel arbitration is affirmed. The Trust shall recover its costs on appeal. Parrilli, J. We Concur: McGuiness, P.J., Corrigan, J. (Not for Publication.)

Division Four

A092058 -- The People v. Jose Pepe Vargas.

We affirm the judgment. Reardon, Acting P.J. We Concur: Sepulveda, J., Kay, J. (Not for Publication.)

A093006 -- Michael Cary Goncalves v. State of California Department of Insurance et al.

The judgment of dismissal is affirmed. The request for imposition of sanctions is denied. Stevens, J. We Concur: Jones, P.J., Simons, J. (Not for Publication.)

Friday, October 12, 2001

Division Two

A096393 -- Paul Edward Sexton v. The Superior Court of Contra Costa County; The People of the State of California, R.P.I.

By the Court: The petition for writ of prohibition/mandate/stay is denied. Kline, P.J.

A092238 -- Judy Thompson v. Guerneville School District et al.

The judgment is affirmed. Ruvolo, J. We Concur: Kline, P.J., Lambden, J. (Not for Publication.)

Division Three

A087254 -- The People v. Paul Demarco.

The judgment is affirmed. Parrilli, J. We Concur: McGuiness, P.J., Corrigan, J. (Not for Publication.)

A088619 & A093142 -- The People v. Walter Vincent Robbie, Jr. In re Walter Vincent Robbie, Jr. on Habeas Corpus.

The judgment is reversed and the matter remanded to the trial court. In light of this resolution, defendant's habeas corpus petition is dismissed as moot. Corrigan, J. We Concur: McGuiness, P.J., Horner, J.* (Certified for Publication.)

*Judge of the Superior Court of Alameda County, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

Division Four

A091018 -- Bruce Springmeyer et al. v. Ford Motor Company; Avis Rent A Car System, Inc., et al.

The summary judgment is affirmed. Costs are awarded to Avis. Reardon, Acting P.J., We Concur: Sepulveda, J., Kay, J. (Not for Publication.)

Friday, October 12, 2001 (continued)

Division Five

A093409 -- Donald J. Flores et al. v. Transamerica Homefirst, Inc.

The order denying the petition to compel arbitration is affirmed. Stevens, J.
We Concur: Jones, P.J., Simons, J. (Not for Publication.)

A093835 -- The People v. Terry Ellen Hill.

The \$600 restitution fine imposed under section 1202.4 and the \$600 parole revocation fine assessed under 1202.45 are ordered stricken. In all other respects the judgment is affirmed. Jones, P.J. We Concur: Stevens, J., Simons, J. (Not for Publication.)

A094416 -- Harold J. Rucker v. Louis V. Baesel.

The judgment is affirmed. Jones, P.J. We Concur: Stevens, J., Simons, J.
(Not for Publication.)

Monday, October 15, 2001

Division One

A093022 -- The People v. Glen Edward White.

The judgment is reversed and the matter is remanded for a new probation revocation hearing. Swager, J. We Concur: Stein, Acting P.J., Marchiano, J. (Not for Publication.)

Division Two

A089939 -- The People v. Eric Warren Green.

The judgment is affirmed. Haerle, J. I concur: Ruvolo, J. (See dissenting opinion by Kline, P.J.) (Not for Publication.)

A093849 -- Michael A. Stein v. Joseph N. Attard.

The injunction shall be modified to include the address of respondent's place of employment and, so modified, is affirmed. Kline, P.J. We Concur: Lambden, J., Ruvolo, J. (Not for Publication.)

Monday, October 15, 2001 (continued)

A089886 -- The People v. Guadalupe Torres.

The conviction for second degree murder cannot stand because of the instructional error on the elements of voluntary manslaughter. It does not necessarily follow, however, that the judgment must be unconditionally reversed. Appellate courts are not restricted to the remedies of affirming or reversing a judgment. Where, as here, the prejudicial error goes only to the degree of the offense for which the defendant was convicted, the appellate court may reduce the conviction to a lesser degree pursuant to section 1260, and affirm the judgment as modified, thereby obviating the need for a retrial. (*See People v. Edwards* (1985) 39 Cal.3d 107, 118.) Both parties have urged this resolution while nevertheless acknowledging that the People have a right to try to retry the murder charge. Because we do not know which option the People prefer, our disposition will preserve both options. (*Ibid.*; *People v. Brooks, supra*, 185 Cal.App.3d at p. 697.)

The judgment is affirmed with respect to the conviction of assault with a deadly weapon, but it is reversed with respect to the conviction of second degree murder with directions as follows: If the People do not bring appellant to trial within 60 days after the filing of the remittitur in the trial court pursuant to Penal Code section 1382, subdivision 2, the trial court shall proceed as if the remittitur constituted a modification of the judgment to reflect a conviction of voluntary manslaughter (Pen. Code, § 192) and use of a firearm within the meaning of Penal Code section 12022.5 and shall resentence appellant accordingly. (*See People v. Edwards, supra*, 29 Cal.3d at p. 118; *People v. Brooks, supra*, 185 Cal.App.3d at pp. 697-698.) Kline, P.J. We Concur: Lambden, J., Ruvolo, J. (Not for Publication.)

Division Four

A095997 -- Mesha H. v. The Superior Court of Contra Costa County; Contra Costa County Social Services Department, R.P.I.

The petition for extraordinary writ is denied on the merits. (§ 366.26, subd. (1); Cal. Rules of Court, rule 39.1B(o); *In re Julie S.* (1996) 48 Cal.App.4th 988, 990-991.) The request for a stay of the order terminating reunification services is denied. The stay of the permanency planning hearing we issued on October 1 is now lifted. Our decision is final in this court immediately. Reardon, Acting P.J. We Concur: Sepulveda, J., Kay, J. (Not for Publication.)

Monday, October 15, 2001 (continued)

Division Four

A094420 -- The People v. Marion Wayne Sutch.

Judgment affirmed. Reardon, Acting P.J. We Concur: Sepulveda, J., Kay, J. (Not for Publication.)

Division Five

A093028 -- The People v. Edgar Rolando Linares.

The judgment of conviction is affirmed. Stevens, J. We Concur: Jones, P.J., Simons, J. (Not for Publication.)

Tuesday, October 16, 2001

Division One

A094511 -- The People v. Charles Ray Galloway.

The judgment is affirmed. Swager, J. We Concur: Stein, Acting P.J., Marchiano, J. (Not for Publication.)

Division Two

A092127 -- The People v. Stanley A. Barbitta.

The judgment is affirmed. Kline, P.J. We Concur: Haerle, J., Ruvoletto, J. (Not for Publication.)

MINUTES

CALIFORNIA COURT OF APPEAL
FIRST APPELLATE DISTRICT
DIVISION TWO

Tuesday, October 16, 2001

The Court met at 9:30 a.m. in its courtroom at 350 McAllister Street, Fourth Floor, San Francisco, California. Present: Kline, P. J., Haerle, J., Lambden, J. and S. Graham, Deputy Clerk.

- A092635 Lannie Staniford
 v.
 Acordia, Inc., et al.
Cause called and argued by Ann Marie Elston, counsel for appellant and William Gaus, counsel for respondent. Cause ordered submitted.
- A093683 Mary E. Ingham
 v.
 Luxor Cab Company
Cause called and argued by Stephen Mackouse, counsel for appellant and Peter Labrador, counsel for respondent. Cause ordered submitted.
- A092553 In re the Marriage of Carol and Bruce Roen
A093948 Carol Roen
 v.
 Bruce Roen
Cause called and argued by John Schreiber and Suzanne Noelle Boucher, counsel for appellant and Eugene Seltzer, counsel for respondent. Cause ordered submitted.
- A092774 George Clifford White, et al.
A092655 v.
 Donna S. White, et al.
Cause called and argued by David Romanski, counsel for appellant Donna White, Cameron Stout, counsel for appellant, Salomon Smith Barney, Inc. and Mark L. Musto, counsel for respondent. Cause ordered submitted.

Court recessed until 1:30 p.m.

Court reconvened at 1:30 p.m. Present: Kline, P. J., Haerle, J., Ruvolo, J. and S. Graham, Deputy Clerk.

A090490 The People
v.
Jay Clyde Groth
Cause called and argued by Roberta Simon, counsel for appellant and Martin S. Kaye, Deputy Attorney General, counsel for respondent. Cause ordered submitted.

A092215 Planned Parenthood Golden Gate, et al.
v.
Richard Gehrs
Cause called and argued by Frank Hughes, counsel for appellant and Beth Parker, counsel for respondent. Cause ordered submitted.

A092609 Ann B. Adams
v.
Rosanne J. Tenorio, et al.
Cause called. Joseph F. Devane appeared on behalf of respondents. No appearance was made on behalf of appellant. Argument was deemed waived and the cause ordered submitted.

A091221 Anita Walia
v.
Aetna, Inc., et al.
Cause called and argued by John Swenson, counsel for appellant and Alan Exelrod, counsel for respondent. Cause ordered submitted.

A093703 Robert E. Morris
v.
Jerry Harper
Cause called and argued by Matthew Mandelbaum, counsel for appellant and Susan Burrell, counsel for respondent. Cause ordered submitted.

A093764 Gilbert T. Graham
v.
Magno J. Ortega
Cause called and argued by Magno Ortega, appellant in propria persona and Gilbert T. Graham, respondent in propria persona. Cause ordered submitted.

A093320 Storage Technology Corp.
v.
Samuel B. Abrams, et al.
Cause called and argued by John Tweedy, counsel for appellant and Michael J.

Weaver, counsel for respondents. Cause ordered submitted.

Court recessed until Friday, October 19, 2001 at 9:30 a.m.

Tuesday, October 16, 2001 (continued)

Division Three

A095024 -- The People v. Robert Earnest.

The judgment is affirmed. Corrigan, J. We Concur: McGuiness, P.J., Parrilli, J. (Not for Publication.)

A091991 -- Nancy Strogoff v. Kevin Hiler, M.D.

The judgment is affirmed. Strogoff shall bear costs of the appeal. Parrilli, J. We Concur: McGuiness, P.J., Corrigan, J. (Not for Publication.)

Division Four

A094203 -- Simon Haviv v. Michael F. David.

The judgment is affirmed. Sepulveda, J. We Concur: Reardon, Acting P.J., Kay, J. (Not for Publication.)

A095250 -- The People v. Richard Walter Kelly.

The judgment is affirmed. Sepulveda, J. We Concur: Reardon, Acting P.J., Kay, J. (Not for Publication.)

Tuesday, October 16, 2001 (continued)

A093925 -- Pometta Family Partnership v. Susan Potgeter.

Accordingly, the judgment is affirmed. Sepulveda, J. We Concur: Reardon, Acting P.J., Kay, J. (Not for Publication.)

A091861 -- Sierra West Bank v. Chak Wong.

The judgment is affirmed. The trial court is directed to award Sierra West reasonable attorney fees and costs on appeal. Sepulveda, J. We Concur: Reardon, Acting P.J., Kay, J. (Not for Publication.)

Division Five

A095757 -- Christina R. v. The Superior Court of Del Norte County; Del Norte County Department of Health and Social Services, R.P.I.

The order to show cause is discharged, and the petition for extraordinary writ review is denied on the merits. (Cal., Const., art VI; § 14; rule 39.1B(o); *Kowis v. Howard* (1992) 3 Cal.4th 888, 894.) Petitioner is barred in any subsequent appeal from making further challenges to the orders terminating reunification services and setting a hearing under section 366.26. (§ 366.26, subd. (1).) Because the section 366.26 hearing is set for October 26, 2001, our decision is final as to this court immediately. (Rule 24.) Simons, J. We Concur: Jones, P.J., Stevens, J. (Not for Publication.)

Wednesday, October 17, 2001

Division One

A091247 -- In re Duvonte L., et al., a Person Coming Under the Juvenile Court Law. Alameda County Social Services Agency v. Alexander L.

The order terminating reunification services is reversed. As appellant has in fact been reunified with the children, we see no need to remand the matter for additional proceedings. The juvenile court therefore is not required to take any further action at this time. Stein, Acting P.J. We Concur: Swager, J., Marchiano, J. (Not for Publication.)

A094162 -- Daniel Nakamura et al. v. Derold Arnick et al.

The order is affirmed. Respondents' request for attorney fees on appeal is denied. Swager, J. We Concur: Stein, Acting P.J., Marchiano, J. (Not for Publication.)

A093193 -- State Farm Mutual Automobile Insurance Company et al. v. Harry Low, as Insurance Commissioner, etc., et al.; Southern Christian Leadership Conference of Greater Los Angeles, Inc. et al.

The judgment is affirmed. Stein, Acting P.J. We Concur: Swager, J., Marchiano, J. (Certified for Publication.)

Division Two

A093468 -- The People v. Andrew Holbrook Haid.

The judgment is affirmed. Lambden, J. We Concur: Kline, P.J., Ruvolo, J. (Not for Publication.)

A091291 -- The People v. Antonio Hernandez.

The judgment is affirmed. Haerle, Acting P.J. We Concur: Lambden, J., Ruvolo, J. (Not for Publication.)

Wednesday, October 17, 2001 (continued)

A090805 -- The People v. Calvin David Walker.

The judgment is affirmed. Lambden, J. I concur: Ruvolo, J. (See concurring opinion by Kline, P.J.) (Not for Publication.)

Division Three

A094689 -- In re Allen D., a Person Coming Under the Juvenile Court Law. The People v. Allen D.

In sum, we find no arguable issues for review, pursuant to *People v. Wende, supra*, 25 Cal.3d 436. The orders of the juvenile court are affirmed. McGuiness, P.J. We Concur: Corrigan, J., Parrilli, J. (Not for Publication.)

Division Five

A093959 -- In re Allen W., a Person Coming Under the Juvenile Court Law. The People v. Allen W.

The order adjudicating appellant a ward of the court and placing him outside the family home is affirmed. Jones, P.J. We Concur: Stevens, J., Simons, J. (Not for Publication.)

Thursday, October 18, 2001

Division One

A094774 -- The People v. Charles T. Thomas, Jr.

The judgment is affirmed. Marchiano, J. We Concur: Stein, Acting P.J., Swager, J. (Not for Publication.)

Division Two

A096421 -- In re David Clawson, on Habeas Corpus.

By the Court: The petition for writ of habeas corpus is denied. Petitioner should seek relief, if any, in the Third District Court of Appeal. Kline, P.J.

A096310 -- In re Douglas Raymond Nelson, on Habeas Corpus.

By the Court: The petition for writ of habeas corpus is denied. Kline, P.J.

A096474 -- In re James Samuel Kor, Jr., on Habeas Corpus.

By the Court: The petition for writ of habeas corpus is denied. Kline, P.J.

A093081 -- Travelers Casualty And Surety Company v. American Equity Insurance Company.

The judgment is affirmed. Travelers shall recover its costs on appeal. Kline, P.J. We Concur: Lambden, J., Ruvolo, J. (Not for Publication.)

Division Three

A090661 -- The People v. Frederick L. Johnson.

The judgment and sentence are affirmed. Parrilli, J. We Concur: McGuiness, P.J., Corrigan, J. (Not for Publication.)

Thursday, October 18, 2001 (continued)

Division Three

A096101 -- In re Emily S., a Person Coming Under the Juvenile Court Law. San Francisco County Social Services Agency v. Ann S.

By the Court: On the court's own motion, the appeal is dismissed because the challenged order is not appealable. Appellant purports to appeal the court's decision July 20, 2001 detaining the child. Appeal may not be taken until the court has entered a dispositional order. McGuiness, P.J.

COURT OF APPEAL
STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT

DIVISION FIVE

Thursday, October 18, 2001

Court convened at 12:30 p.m. in its Courtroom at 350 McAllister Street, Fourth Floor, San Francisco, California. Present: Jones, P.J.; Stevens, J.; Simons, J., and Reardon, J. sitting on assignment from the Chief Justice, and Richard H. Sandvik, Deputy Clerk.

- A093440 Che Wo Wan et al.
v.
World Savings and Loan et al.
Cause called and argued by Thomas E. Alborg, counsel for appellant and by Barry Hovis, counsel for respondent. Cause ordered submitted.
- A092400 N. Arden Danekas
v.
Residential Rent Stabilization and Arbitration Board of San Francisco
Cause called and argued by Steven S. Rosenthal, counsel for appellant and by Kevin S. Dickey, counsel for respondent. Cause ordered submitted.
- A093113 The People
v.
Lamonta Andre Ramey
Cause called and argued by Guy A. Campisano, counsel for appellant and by Nancy H. Tung, Deputy Attorney General, counsel for respondent. Cause ordered submitted.
- A092568 The People
v.
Emmanuel McCowan
Cause called and argued by Charles M. Gretsche, counsel for appellant and by Michele Swanson, Deputy Attorney General, counsel for respondent. Cause ordered submitted.
- A091909 The People
v.
Zackary Terry Harris, Sr.
Cause called and argued by Oliver J. Northup, counsel for appellant and by Lisa H. Ashley Ott, Deputy Attorney General, counsel for respondent. Cause ordered submitted.

A091082 The People

v.

Troy William Thompson

Cause called and argued by Richard Such, counsel for appellant and by Seth K. Schalit, Deputy Attorney General, counsel for respondent. Submission deferred.

A092825 In re the Marriage of Meryl Urdang and A. Larry Tannenbaum

A. Larry Tannenbaum

v.

Meryl S. Urdang

Cause called and argued by David J. Morgan, counsel for appellant and by Bradford Baugh, counsel for respondent. Cause ordered submitted.

A088959 Charles E. Palmore et al.

v.

Aerojet-General Corporation

Cause called and argued by Michael A. Vasquez, counsel for appellant and by Bryce C. Anderson, counsel for respondent. Cause ordered submitted.

Court adjourned at 3:30 p.m.

Friday, October 19, 2001

Division One

A091762 -- Cody F., a Minor, etc., et al. v. Thomas J. Falletti.

A092552 -- Cody F., a Minor, etc., et al. v. Union Bank of California.

A092539 -- Cody F., a Minor, etc., et al. v. Charles McLaughlin.

A093075 -- Cody F., a Minor, etc., et al. v. Crystal Cloud et al.

The right of control that attends ownership of an easement has a narrower scope than the right of control that accompanies fee ownership of real property. Therefore, the corresponding duty to third parties in managing that property interest must also be narrower in scope and tied to the reason that the easement is granted. The judgments appealed from are affirmed. Marchiano, J. We Concur: Stein, Acting P.J., Swager, J. (Certified for Publication.)

A092921 -- The People v. Jack Richard McGee.

The sentencing portion of the judgment is reversed with respect to counts 2, 4, and 6 and the one-year enhancement for the second alleged prior conviction, and the matter is remanded to the trial court for resentencing consistent with this opinion. In all other respects the judgment is affirmed. Swager, J. We Concur: Stein, Acting P.J., Marchiano, J. (Not for Publication.)

A089343 -- West Bay Builders, Inc. v. City of Martinez.

By the Court: The petition for rehearing is denied. Swager, Acting P.J.

Division Two

**A091316 -- In re the Marriage of Daniel Levin and Janie Lee Ligon.
Daniel Levin v. Janie Lee Ligon.**

The judgment is reversed. Trial court is directed to enter an order overruling Wife's demurrer. Ruvolo, J. We Concur: Kline, P.J., Lambden, J. (Not for Publication.)

Friday, October 19, 2001 (continued)

A090886 & A092087 -- James Singh v. MacArthur Metro et al.

The judgment of dismissal and order awarding fees are affirmed. Ruvolo, J. We Concur: Kline, P.J., Haerle, J. (Not for Publication.)

A093744 -- The People v. David Allen Young.

The judgment is affirmed. Kline, P.J. We Concur: Haerle, J., Ruvolo, J. (Not for Publication.)

MINUTES

CALIFORNIA COURT OF APPEAL FIRST APPELLATE DISTRICT DIVISION TWO

Friday, October 19, 2001

The Court met at 9:30 a.m. in its courtroom at 350 McAllister Street, 4th Floor, San Francisco. Present: Kline, P.J., Lambden, J., Ruvolo, J., and I. Santos, Deputy Clerk.

- A096016 Marjorie Knoller et al.,
v.
City of San Francisco.
Cause called and argued by David Blatte, counsel for appellant, and Margaret Baumgartner, counsel for respondent. Cause ordered submitted.
- A092479 The Nippon Fire & Marine Insurance Company, Ltd., et al.,
v.
Pedus Security Services, Inc.,
Con-Way Western Express, Inc.
- A093984 Con-Way Western Express, Inc.
v.
Pedus Security Services, Inc.
Joseph Geri, counsel for appellant, present in the courtroom. Walter Schneider, counsel for respondent, unavailable. Case continued to November calendar, date and time to be advised.
- A093755 John Roe
v.
The State Of California.
Cause called and argued by Matthew Witteman, counsel for appellant, and Bradley Solomon, counsel for respondent. Cause ordered submitted.
- Court recessed until 1:30 p.m.
- Court reconvened at 1:30 p.m. Present: Haerle, Acting P.J., Lambden, J., Ruvolo, J. and I. Santos, Deputy Clerk.
- A091592 The People,
v.

Jeanette Marie Bridgett.

Cause called and argued by Scott Sugarman, counsel for appellant, and Morris Lend, Deputy Attorney General, counsel for respondent. Cause ordered submitted.

A091829

E.G. Craig,

v.

Chicago Title Insurance Company et al.

Cause called and argued by Donald Schwartz, counsel for appellant, and Scott Sommer, counsel for respondent. Cause ordered submitted.

A092504

Flying Dutchman Park, Inc.

v.

City and County of San Francisco.

Cause called and argued by J. Brian McCauley, counsel for appellant, and Andrew Yuan-Sung Cheng, counsel for respondent. Cause ordered submitted.

COURT ADJORNED.

Friday, October 19, 2001 (continued)

Division Three

A092330 -- In re Eli F., a Person Coming Under the Juvenile Court Law. The People v. Eli F.

By the Court: The petition for rehearing is denied. McGuiness, P.J.

A094255 -- In re Kayla M., et al., a Person Coming Under the Juvenile Court Law. Alameda County Social Services Agency v. Andrea M.

By the Court: Since this court's September 28, 2001, opinion does not meet the standard for publication as set forth in rule 976(b) of the California Rules of Court, the request for publication is denied. Pursuant to rule 9788(a) of the California Rules of Court, the Clerk is directed to forward to the Clerk of the Supreme Court the request for publication, the opinion, and a copy of this order. McGuiness, P.J.

Division Four

A094425 -- In re Rex H., et al., a Person Coming Under the Juvenile Court Law. Department of Health and Human Services v. Billie H.

Because appellant lacks standing to prosecute it, the appeal is dismissed. Sepulveda, J. We Concur: Reardon, Acting P.J., Kay, J. (Not for Publication.)

A092600 -- The People v. Jay Christopher Kriegler.

We find no error in the trial court's order denying defendant's motion to suppress. The judgment is affirmed. Sepulveda, J. We Concur: Reardon, Acting P.J., Kay, J. (Not for Publication.)

A086835, A088269 -- Stuart S. London v. Medical Underwriters of California.

The judgment and order appealed from are affirmed. Sepulveda, J. We Concur: Reardon, Acting P.J., Kay, J. (Not for Publication.)

Friday, October 19, 2001 (continued)

A092717 -- The People v. Leonardo Bryant Smith.

The judgment is modified by striking the two stayed one-year terms imposed pursuant to section 667.5, subdivision (b). As so modified, the judgment is affirmed. The clerk of the trial court is directed to prepare an amended abstract of judgment and forward a certified copy to the Department of Corrections. Kay, J. We Concur: Reardon, Acting P.J., Sepulveda, J. (Not for Publication.)

Monday, October 22, 2001

Division Two

A090490 -- The People v. Jay Clyde Groth.

The judgment is reversed. Kline, P.J. We Concur: Haerle, J., Ruvolo, J.
(Not for Publication.)

A092147 -- The People v. Kristopher Lee Messina.

The judgment is affirmed. Lambden, J. We Concur: Kline, P.J., Haerle, J.
(Not for Publication.)

**A096515 -- David Silva v. The Superior Court of San Francisco
County; The People of the State of California, R.P.I.**

By the Court: The petition for writ of mandate/prohibition/stay is denied.
Kline, P.J.

A092081 -- Paramjit Singh v. Vinod Kumar Sharma.

The judgment is affirmed. Haerle, Acting P.J. We Concur: Lambden, J.,
Ruvolo, J. (Not for Publication.)

Division Four

A093563 -- The People v. Norman Neal Lewis.

The judgment of conviction is affirmed. Kay, J. We Concur: Reardon,
Acting P.J., Sepulveda, J. (Not for Publication.)

A093454 -- Ann Marie N. v. City And County of San Francisco.

We reverse the judgment with respect to the nonsuit on the intentional
concealment claim. In all other respects the judgment is affirmed. The parties
shall bear their own costs on appeal. Kay, J. We Concur: Reardon, Acting P.J.,
Sepulveda, J. (Not for Publication.)

Tuesday, October 23, 2001

Division Two

A089195 -- The People v. Susan Lea Green. In re Susan Lea Green on Habeas Corpus.

The judgment is reversed. Haerle, J. We Concur: Kline, P.J., Ruvolo, J. (Not for Publication.)

A090388 -- The People v. Robert Hartmann et al.

The judgments are affirmed. Stein, Acting P.J. We Concur: Swager, J., Marchiano, J. (Not for Publication.)

A091256 -- The People v. Jay Thomas King.

A094344 -- In re Jay Thomas King, on Habeas Corpus.

The judgment on appeal is affirmed. The order to show cause before this court is discharged. By separate order filed this date in *In re Jay Thomas King*, A094344, we have ordered the Director of the Department of Corrections to show cause before the Solano County Superior Court, when the matter is placed on calender, why the relief requested in the petition shall not be granted. Ruvolo, J. We Concur: Kline, P.J., Haerle, J. (Not for Publication.)

A090390 -- The People v. William M. Rogers.

The judgment is affirmed. Haerle, J. (See concurring opinion by Kline, P.J., see dissenting opinion by Lambden, J.) (Not for Publication.)

A093909 -- County of San Mateo v. Joseph Kenneth Sorden.

The order relieving Sorden from the obligation of paying non-welfare 1997 and 1998 arrearages due to Milton is reversed. The matter is remanded for further proceedings consistent with this opinion. Kline, P.J. We Concur: Haerle, J., Ruvolo, J. (Not for Publication.)

Tuesday, October 23, 2001 (continued)

Division Three

A095278 -- The People v. Kit Flugrad.

The judgment is affirmed. Parrilli, J. We Concur: McGuiness, P.J., Corrigan, J. (Not for Publication.)

A093495 -- In re Lavonndre H., a Person Coming Under the Juvenile Court Law. The People v. Lavonndre H.

The record before us contains evidence that could have sustained a finding that appellant drove or stole the Toyota within the meaning of Vehicle Code section 10851, but contains no express finding from the trial court concerning the basis for its true finding. Accordingly, we are unable to evaluate whether the trial court applied the law correctly. We must therefore reverse the judgment finding that appellant violated Vehicle Code section 10851 and Penal Code section 496. As did the court in *Jaramillo*, we direct that the People may elect to again proceed against appellant on either or both counts. If no such election is made within 30 days of the finality of this decision, the trial court is directed to reinstate only the true finding for violation of Vehicle Code section 10851, and to hold a new dispositional hearing. (See *Jaramillo, supra*, 16 Cal.3d at p. 760.) Parrilli, J. We Concur: McGuiness, P.J., Corrigan, J. (Not for Publication.)

A090755 -- The People v. Ryan H.

The orders sustaining the allegations of the petition and declaring appellant a ward of the court are reversed and remanded, with orders that the findings be modified to reflect a true finding of attempted violation of section 401, and for further dispositional proceedings not inconsistent with this opinion. In all other respects, the judgment is affirmed. McGuiness, P.J. We Concur: Corrigan, J., Parrilli, J. (Certified for Publication.)

MINUTES
CALIFORNIA COURT OF APPEAL
FIRST APPELLATE DISTRICT
DIVISION FOUR
Tuesday, October 23, 2001

The Court convened at 9:30 a.m. in its courtroom at 350 McAllister Street, 4th Floor, San Francisco. Present: Reardon, Acting P.J., Sepulveda, J. and Kay, J.; Pamela Aguilar, Deputy Clerk; CHP Officer Shelley Aldridge, Bailiff.

- A089871 Phoenix Leasing, Inc.
 v.
 Harry C. Johnson et al.
Cause called. Joseph M. Demko argued for respondent/cross-appellant Phoenix Leasing, Inc. Walter T. Johnson argued for appellants/cross-respondents. Cause submitted.
- A091720 People
 v.
 Laura Rachel Laughman
Cause called. Randy Baker argued for appellant Laughman. Certified law student Adriano Hrvatin argued for respondent. Cause submitted.
- A091496 People
 v.
 Lamont Alexander Dean
Cause called. William Capriola argued for appellant Dean. Deputy Attorney General Jill Thayer argued for respondent. Cause submitted.
- A094022 People
 v.
 Far West Insurance Company
Cause called. Brendan Pegg argued for appellant Far West Insurance Company. Respondent did not appear. Cause submitted.
- A092258 H&H Real Estate Management & Development Company
 v.
 Sanitary District No. 1 of Marin County
Cause called. Stephen N. Roberts argued for appellant H&H Real Estate. Gregory A. Wedner argued for respondent. Cause submitted.
- A092663 David Mellinger et al.
 v.
 Ticor Title Insurance Company of California
Cause called. Robert J. Kahn argued for appellants Mellinger et al. Scott Sommer argued for respondent. Cause submitted.

The Court adjourned at 11:42 a.m.

MINUTES
CALIFORNIA COURT OF APPEAL
FIRST APPELLATE DISTRICT
DIVISION FOUR
Tuesday, October 23, 2001

The Court reconvened at 1:30 p.m. in its courtroom at 350 McAllister Street, 4th Floor, San Francisco. Present: Reardon, Acting P.J., Sepulveda, J., and Kay, J.; Channing Hoo, Deputy Clerk.

- A090966 In re the Marriage of McKindles
A092570 James M. McKindles
 v.
 Marcia M. McKindles
 Causes called. Harry Styron argued for appellant James M. McKindles. Frank R. Frisch argued for respondent. Causes submitted.
- A094474 Golden Eagle Insurance Company
 v.
 Arnette Optic Illusions, Inc.
 Cause called. Kelley K. Beck argued for appellant Golden Eagle. Keith Slenkovich argued for respondent. Cause submitted.
- A095769 Romualda T.
 v.
 Superior Court, San Francisco County
 San Francisco Department of Human Services
 Cause called. Lori Lee argued for petitioner. Jennifer Williams argued for real party in interest. Cause submitted.
- A092109 Annette Dobbs
 v.
 Nob Hill Properties
 Cause called. Barry Hovis argued for appellant/cross-respondent Properties. Daniel Berko argued for respondent/cross-appellant Dobbs. Cause submitted.

A093444

Steven Killough

v.

City and County of San Francisco et al.

Cause called. Ellen Mendelson argued for appellant Killough. Myron D. Moyer argued for respondent. Cause submitted.

The Court adjourned at 3:02 p.m.

Monday, October 23, 2001 (continued)

Division Five

A094457 -- State of California Franchise Tax Board v. Ronald E. Bushnell.

The judgment is affirmed. Stevens, J. We Concur: Jones, P.J., Simons, J. (Not for Publication.)

A092197 -- The People v. David James Rhodes.

The order is affirmed. The trial court is directed to amend the abstract of judgment to reflect a violation of Penal Code section 243, subdivision (c), rather than Penal Code section 243, subdivision (d). Stevens, J. We Concur: Jones, P.J., Simons, J. (Not for Publication.)

Wednesday, October 24, 2001

Division One

A093738 -- In re James L., a Person Coming Under the Juvenile Court Law. Marin County Department of Health and Human Services v. David L.

The orders of the juvenile court terminating parental rights and modifying post-termination visitation are affirmed. Marchiano, J. We Concur: Stein, Acting P.J., Swager, J. (Not for Publication.)

A093684 -- Alexander Reese v. Hung Kim Wong et al.

For all the foregoing reasons, the trial court correctly instructed on the measure of damages as set forth in section 3306. The judgment is affirmed. Swager, J. We Concur: Stein, Acting P.J., Marchiano, J. (Certified for Publication.)

Division Two

A093520 -- Harold Antonini v. Abdul Shaikh et al.

The judgment is affirmed. Haerle, J. We Concur: Kline, P.J., Lambden, J. (Not for Publication.)

A091592 -- The People v. Jeanette Marie Bridgett.

The order entered by Judge Hurley on May 23, 2000, purporting to revoke appellant's probation is reversed. The order entered by Judge Bereola on March 27, 2000, terminating appellant's probation, is reinstated. Lambden, J. We Concur: Haerle, Acting P.J., Ruvolo, J. (Not for Publication.)

A092798 -- The People v. George L. Kendall.

The judgment is affirmed. Lambden, J. We Concur: Haerle, Acting P.J., Ruvolo, J. (Not for Publication.)

Wednesday, October 24, 2001 (continued)

A095206 -- Raphael P., Jr. v. The Superior Court of San Francisco County; San Francisco Department of Human Services, R.P.I.

By the Court: The petition for writ of supersedeas/stay is denied. Kline, P.J.

A092406 -- The People v. Artemio Gallegos Saucedo.

The order is affirmed. Lambden, J. We Concur: Haerle, Acting P.J., Ruvolo, J. (Not for Publication.)

A092448 -- Traders Sports, Inc. et al. v. City of San Leandro.

The judgment is affirmed. Ruvolo, J. We Concur: Haerle, Acting P.J., Lambden, J. (Certified for Partial Publication.)

Division Three

A094874 -- The People v. Paul Jackson.

The judgment is affirmed. Parrilli, J. We Concur: McGuinness, P.J., Corrigan, J. (Not for Publication.)

STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION THREE

Wednesday, October 24, 2001

Court convened at 9:05 a.m. in its Courtroom at 350 McAllister Street, Fourth Floor, San Francisco, California.

Present: McGuiness, P.J., Corrigan, J., Parrilli, J; I. Calanoc and James Manniello, Deputy Clerks.

A093979 Amal Zenati Hawwa,

v.

Muhammad Hawwa.

Cause called and argued by Robert Roth, counsel for appellant, and Ann Van De Pol, counsel for respondent. Cause ordered submitted.

COURT ADJOURNED

Wednesday, October 24, 2001 (continued)

Division Four

**A095906 -- Gilberto F.G. v. The Superior Court of Sonoma County;
Sonoma County Department of Human Services, R.P.I.**

The petition is denied on the merits. (Cal. Rules of Court, rule 39.1B(o).)
This decision is final immediately. (*Id.*, rule 24(a).) Kay, J. We Concur:
Reardon, Acting P.J., Sepulveda, J. (Not for Publication.)

**A094490 -- In re Daniel V., a Person Coming Under the Juvenile Court
Law. The People v. Daniel V.**

The order adjudicating appellant a ward of the court and placing him on
probation in his father's home is affirmed. Stevens, J. We Concur: Jones, P.J.,
Simons, J. (Not for Publication.)

Thursday, October 25, 2001

Division One

A096032 -- Anaheim Broadcasting Corporation v. Frederick R. Cote.

By the Court: Appellant having failed to procure the record on appeal within the time allowed or within any valid extensions of time, and having failed to apply for relief from default, the appeal filed on August 13, 2001 is dismissed. (See Cal.Rules of Court, rule 10(c).) Swager, Acting P.J.

A095871 -- In re Ryan T. and Nicholas T., a Person Coming Under the Juvenile Court Law. Contra Costa County Social Services Agency v. Michelle M.

By the Court: On the court's own motion, the appeals are dismissed as untimely. Appellant purports to appeal dispositional rulings made February 14, 2001. Her notices of appeal were due 60 days later, but were filed August 10, 2001, nearly 4 months late. Stein, Acting P.J.

Thursday, October 25, 2001 (continued)

Division Two

A095959 -- Denis M. N. Daniel v. Kaiser Foundation Health Plan, Inc.

Daniel requests that, alternatively, we consider the appeal as a writ of mandate. It is true that in exceptional situations, a party may seek appellate review of an order compelling arbitration by filing a petition for writ of mandate. (See, e.g., *Wheeler v. St. Josephs Hospital*, *supra*, 63 Cal.App.3d at p. 353.) Daniel, however, has not attached the complete record. We therefore cannot assess the merits of her argument and cannot treat this as a writ of mandate. We express no opinion as to whether we would consider such a writ in the future if it were filed with the proper record. We hereby dismiss the appeal. Lambden, J. We Concur: Kline, P.J., Haerle, J. (Not for Publication.)

A096016 -- Marjorie Knoller et al. v. City and County of San Francisco.

The orders and judgments are affirmed. Our stay will dissolve upon issuance of the remittitur. Ruvolo, J. We Concur: Kline, P.J., Lambden, J. (Not for Publication.)

A090429 -- Ernest M. Thayer et al. v. Wells Fargo Bank, N.A.

Order Modifying Opinion. The Court: It is ordered that the opinion filed herein on October 2, 2001, be modified as follows: (See order.) Kline, P.J.

A094479 -- The People v. Brian Matthew Tymkowicz.

The judgment is affirmed. Kline, P.J. We Concur: Haerle, J., Lambden, J. (Not for Publication.)

Division Three

A093498 -- In re Melvin B., a Person Coming Under the Juvenile Court Law. The People v. Melvin B.

The order is affirmed. McGuiness, P.J. We Concur: Corrigan, J., Parrilli, J. (Not for Publication.)

Thursday, October 25, 2001 (continued)

**A096000 -- Charles N., Sr. v. The Superior Court of Marin County;
Marin County Department of Social Services, R.P.I.**

The petition for extraordinary relief is denied on the merits. (Cal. Const., art. VI, § 14; *Kowis v. Howard* (1992) 3 Cal.4th 888, 894.) Because the permanency planning hearing is set for December 4, 2001, our decision is immediately final as to this court. (California Rules of Court, rule 24(d).) Parrilli, J. We Concur: McGuiness, P.J., Corrigan, J. (Not for Publication.)

**A088619 & A093142 -- The People v. Walter Vincent Robbie, Jr.; In re
Walter Vincent Robbie, Jr. on Habeas Corpus.**

By the Court: It is ordered that the opinion filed herein on October 12, 2001, be modified in the following particular. (See order.) This modification does not effect a change in the judgment. Corrigan, Acting P.J.

Division Five

A094876 -- The People v. Joshua C. Digman.

The judgment is affirmed. Jones, P.J. We Concur: Stevens, J., Simons, J. (Not for Publication.)

**A092914 -- In re Samuel J., a Person Coming Under the Juvenile Court
Law. The People v. Samuel J.**

The judgment is reversed and the case is remanded for further proceedings consistent with this opinion. Simons, J. We Concur: Jones, P.J., Stevens, J. (Certified for Publication.)

Friday, October 26, 2001

Division One

A091121, A091880 -- Robert W. Carrau et al. v. Marvin Lumber and Cedar Company, et al.

The judgment is reversed. Marvin is awarded its costs on appeal. Stein, Acting P.J. We Concur: Swager, J., Marchiano, J. (Certified for Publication.)

A094304 -- In re Richard M., Jr., a Person Coming Under the Juvenile Court Law. The People v. Richard M., Jr.

Accordingly, the judgment is affirmed. Swager, J. We Concur: Stein, Acting P.J., Marchiano, J. (Not for Publication.)

A092274 -- Karen Nishihama v. City and County of San Francisco.

The judgment is modified by reducing the award of costs for medical care from \$20,295 to \$6,727, thereby reducing the total award of damages to \$85,496. As so modified, the judgment is affirmed. Each party will bear its own costs on appeal. Stein, Acting P.J. We Concur: Swager, J., Marchiano, J. (Certified for Publication.)

A091718 -- Republic Indemnity Company of America, etc., et al. v. Lyle Martin et al.

Accordingly, the summary judgment in favor of respondents is reversed and the matter is remanded to the trial court for proceedings not inconsistent with the views expressed herein. Swager, J. We Concur: Stein, Acting P.J., Kay, J.* (Not for Publication.)

*Associate Justice of the Court of Appeal, First Appellate District, Division Four, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

Division Two

A089732 -- Hardeep Dosanjh et al. v. Sardool Takhar et al.

The judgment is affirmed. Costs on appeal to respondents. Ruvolo, J. We Concur: Kline, P.J., Haerle, J. (Not for Publication.)

Friday, October 26, 2001 (continued)

A096523 -- In re Charles Huntley, on Habeas Corpus.

By the Court: The petition for writ of habeas corpus is denied. Kline, P.J.
(Not for Publication.)

A096605 -- In re David Perez, on Habeas Corpus.

By the Court: The petition for writ of habeas corpus is denied. Kline, P.J.

A096585 -- In re Carmon Warren, on Habeas Corpus.

By the Court: The petition for writ of habeas corpus is denied. Kline, P.J.

Division Four

A090570 -- The People v. Brandon E. Groves.

The consecutive sentence of 25 years to life on count 3 is reversed and the matter remanded for resentencing. In all other respects, the judgment is affirmed. Reardon, Acting P.J. We Concur: Sepulveda, J., Kay, J. (Not for Publication.)

A093444 -- Killough v. City and County of San Francisco et al.

The judgment is affirmed. Sepulveda, J. We Concur: Reardon, Acting P.J., Kay, J. (Not for Publication.)

Friday, October 26, 2001 (continued)

Division Four

A093687 -- Mid-Century Insurance Exchange v. Daimler-Chrysler Corporation et al.

The judgment of dismissal is affirmed. Reardon, Acting P.J. We Concur: Sepulveda, J., Kay, J. (Certified for Publication.)

Division Five

A088959 -- Charles E. Palmore et al. v. Aerojet-General Corporation.

The judgment is affirmed. Simons, J. We Concur: Jones, P.J., Stevens, J. (Not for Publication.)

A092825 -- In re the Marriage of Meryl Urdang and A. Larry Tannenbaum.

The order is affirmed. Simons, J. We Concur: Jones, P.J., Stevens, J. (Not for Publication.)

Monday, October 29, 2001

Division One

A092797 -- The People v. Ann Catherine Harmon.

The judgment is affirmed. Stein Acting P.J. We Concur: Swager, J., Marchiano, J. (Not for Publication.)

A094321 -- The People v. Dan King.

By the Court: The “Motion for an Order that Appellant’s Two Notices of Appeal Were Filed in a Timely Manner” and related relief, and the “motion for Relief From Requirement of Obtaining a Certificate of Probable Cause” and related relief, are herein denied. Even if this Court were to treat appellant’s notices of appeal as timely filed, the appeal is defective due to appellant’s failure to obtain a certificate of probable cause. No good cause appears to excuse appellant from that default. Accordingly, the appeal is dismissed. Stein, Acting P.J.

A096496 -- The People of the State of California v. David Arthur Vichi.

By the Court: On the court’s own motion, the appeal is dismissed because it is premature. Appellant has not been sentenced. The court ordered a 90-day diagnostic study pursuant to Penal Code section 1203.03. (See *People v. Wilson* (1985) 169 Cal.App.3d 1149, 1152, fn. 1.) Swager, Acting P.J.

Division Two

A094156 -- In re Jessie W. et al. v. Persons Coming Under the Juvenile Court Law. Contra Costa County Social Services Department v. Jesse W.

The appeal is dismissed, and father’s request to treat his briefing as a petition for writ of habeas corpus is denied. Lambden, J. We Concur: Kline, P.J., Ruvolo, J. (Certified for Publication.)

Monday, October 29, 2001, (continued)

Division Three

A092381 -- Michael Ard v. County of Contra Costa.

The judgment of dismissal is reversed. On remand, the trial court is directed to allow the plaintiff leave to amend the complaint to allege equitable estoppel. Costs awarded to Appellant. Parrilli, J. We Concur: McGuinness, P.J., Corrigan, J. (Certified for Publication.)

A089698 -- Edwin May v. State Farm Fire And Casualty Company.

By the Court: The petition for rehearing is denied. McGuinness, P.J.

Division Four

A089871 -- Phoenix Leasing Incorporated v. Harry C. Johnson et al.

We affirm the judgment for damages in favor of Phoenix, but reverse the prevailing party determination and remand for further proceedings consistent with this opinion. The parties will bear their own costs on appeal. Reardon, Acting P.J. We Concur: Sepulveda, J., Kay, J. (Not for Publication.)

A095769 -- Romualda T. v. The Superior Court of San Francisco County; San Francisco Department of Human Services.

The petition for an extraordinary writ is denied on the merits. (§ 366.26, subd. (1); Cal. Rules of Court, rule 39.1A(b)(2).) Our decision is final in this court immediately. (Cal. Rules of Court, rule 24(d).) Sepulveda, J. We Concur: Reardon, Acting P.J., Kay, J. (Not for Publication.)

A093440 -- Che Wo Wan et al. v. World Savings and Loan Association et al

Accordingly, the judgment is affirmed. Defendants shall recover their costs for this appeal. Simons, J. We Concur: Jones, P.J., Stevens, J. (Not for Publication.)

Tuesday, October 30, 2001

Division Two

A093328 -- Minnesota Corn Processors, et al. v. Alfred Saroni, Jr.

The order denying the petition to compel arbitration is reversed and this case is remanded to the trial court for further proceedings consistent with this opinion. Costs on appeal are awarded to appellant. Haerle, J. We Concur: Kline, P.J.; Lambden, J. (Not for Publication.)

A091746 -- The People v. Roderick Wayne Wilkerson.

The judgment is affirmed. Ruvolo, J. We Concur: Kline, P.J., Lambden, J. (Not for Publication.)

Division Three

A094428 -- The People v. Deaudry Carr

Judgment affirmed. Parrilli, J. We Concur: McGuiness, P.J., Corrigan, J. (Not for Publication.)

A093093 -- The People v. Teddy James Cudjo.

In sum, we find no arguable issues for review, pursuant to *People v. Wende*, *supra*, 25 Cal.3d 436. The judgment is affirmed. McGuiness, P.J. We Concur: Corrigan, J., Parrilli, J. (Not for Publication.)

A090032 -- In re the Marriage of Irene and Louis Drapeau. Irene Conlin Drapeau v. Louis Claude Drapeau.

The trial court's ruling regarding the characterization of the ERB is reversed. On remand, the trial court shall determine Jennifer's community share therein and reserve jurisdiction over the issue of the ERB until Louis leaves his employment. The spousal support order is reversed and remanded to permit the trial court to consider the parties' marital savings history as an element in their marital standard of living. Corrigan, J. We Concur: McGuiness, P.J., Parrilli, J. (Not for Publication.)

Tuesday, October 30, 2001 (continued)

A093979 -- In re the Marriage of Muhammad and Amal Hawwa, Amal Zenati Hawwa v. Muhammad Hawwa.

The trial court's rulings on child custody, attorney fees, and reimbursement of travel expenses are reversed and remanded. The ruling on spousal support is affirmed. Each party to bear their own costs. Corrigan, J. We Concur: McGuiness, P.J., Parrilli, J. (Not for Publication.)

Division Four

A091496 -- The People v. Lamont Alexander Dean.

The judgment is reversed as to the sentence imposed and the cause is remanded for the limited purpose of resentencing. Sepulveda, J. We Concur: Reardon, Acting P.J., Kay, J. (Not for Publication.)

A093007 -- Michael Edelstein et al. v. Patricia Fado. as Director of Elections, etc.

In the meantime, the judgment of the superior court is reversed and the cause is remanded to that court with directions to enter appropriate declaratory relief in favor of plaintiffs. (*Canaan, supra*, 40 Cal.3d at p. 724.) Plaintiffs to recover their costs on appeal. Sepulveda, J. We Concur: Reardon, Acting P.J., Kay, J. (Certified for Publication.)

A091720 -- The People v. Laura Rachel Laughman.

The judgment is affirmed. Sepulveda, J. We Concur: Reardon, Acting P.J., Kay, J. (Not for Publication.)

Tuesday, October 30, 2001 (continued)

A090966, A092570 -- In re the Marriage of James M. and Marcia M. McKindles.

The statement of decision and order of February 24, 2000, is reversed, except for that part of the order awarding Wife \$6,500 in attorney fees, which is affirmed. The order dated August 16, 2000, awarding attorney fees pendente lite is reversed as to the dollar amount and the command to pay the fees forthwith. In all other respect the order is affirmed. The matter is remanded to the trial court to determine the amount of attorney fees to be awarded to Wife, and whether that amount should be paid forthwith or in installments. The parties shall bear their own costs for these appeals. Kay, J. We Concur: Reardon, Acting P.J., Sepulveda, J. (Not for Publication.)

A092373 -- The People v. Kim Jerome Rasmussen.

Judgment affirmed. Reardon, Acting P.J. We Concur: Sepulveda, J., Kay, J. (Not for Publication.)

Wednesday, October 31, 2001

Division One

A092725 -- In re Cintheia M., et al., a Person Coming Under the Juvenile Court Law. Contra Costa Social Service Department v. Jose B.-G.

The order is affirmed. Marchiano, J. We Concur: Stein, Acting P.J., Swager, J. (Not for Publication.)

A091817 -- In re Jonathan M., a Person Coming Under the Juvenile Court Law. The People v. Jonathan M.

The judgment is affirmed. Swager, J. We Concur: Stein, Acting P.J., Marchiano, J. (Not for Publication.)

Division Two

A093703 -- Robert E. Morris v. Jerry L. Harper, as Director, etc.

The judgment is affirmed. Costs to respondent. Ruvolo, J. We Concur: Kline, P.J., Haerle, J. (Not for Publication.)

A093106 -- The People v. Luis M. Renteria.

The judgment is affirmed. Kline, P.J. We Concur: Lambden, J., Ruvolo, J. (Not for Publication.)

A093487 -- In re Michael V., Jr., a Person Coming Under the Juvenile Court Law. San Francisco County Department of Human Services v. Michael V., Sr.

The order is affirmed. Kline, P.J. We Concur: Lambden, J., Ruvolo, J. (Not for Publication.)

Division Three

A094745 -- The People v. Alvernon Goodwin.

The judgment is affirmed. Corrigan, J. We Concur: McGuinness, P.J., Parrilli, J. (Not for Publication.)

Wednesday, October 31, 2001 (continued)

A094244 -- Elaine Jolin et al. v. Joyce Baker et al.

The order denying the motion for a new trial is affirmed. The order denying the motion to tax costs is reversed and remanded insofar as it requires payment of expert witness fees by David Jolin. On remand the superior court is directed to order payment of expert witness fees by appellants Robert and Elaine Jolin and Wanda Lopez only. Respondents' motion for sanctions is denied but they shall recover their costs on appeal. Corrigan, J. We Concur: McGuinness, P.J., Parrilli, J. (Not for Publication.)

A092628 -- In re Jamal M., a Person Coming Under the Juvenile Court Law. The People v. Jamal M.

The maximum term of appellant's commitment is modified to four years, eight months. Appellant is also awarded 102 days of custody credits. The matter is remanded to the juvenile court with instructions to modify the order of commitment accordingly. The juvenile court's orders are otherwise affirmed. Corrigan, J. We Concur: McGuinness, P.J., Parrilli, J. (Not for Publication.)

A091283 -- The People v. Robert Harry Outman.

The judgment is affirmed. Corrigan, J. We Concur: McGuinness, P.J., Parrilli, J. (Not for Publication.)

A089933 -- Stamm Theatres, Inc., et al. v. Hartford Casualty Insurance Company.

A090372 -- Stamm Theatres, Inc., et al. v. Hartford Casualty Insurance Company.

The ruling granting Hartford summary adjudication is reversed. The judgment entered on the jury's verdict is affirmed. Stamm shall recover its costs on appeal. Parrilli, J. We Concur: McGuinness, P.J., Corrigan, J. (Certified for Partial Publication.)

Wednesday, October 31, 2001 (continued)

Division Four

A094875 -- The People v. Carlos Raul Alvarez.

The judgment of conviction is affirmed. The matter is remanded to the trial court with directions to determine the appropriate presentence credits to be granted appellant and issue an amended abstract of judgment reflecting the court's determination. Kay, J. We Concur: Reardon, Acting P.J., Sepulveda, J. (Not for Publication.)

A094899 -- The People v. Ronnie Derone Faulkner.

The judgment is affirmed. Reardon, Acting P.J. We Concur: Sepulveda, J., Kay, J. (Not for Publication.)

A094746 -- The People v. Ivory Mims.

Judgment affirmed. Reardon, Acting P.J. We Concur: Sepulveda, J., Kay, J. (Not for Publication.)

Division Five

A090584 -- Michael H. Clement Corporation et al. v. Joel Keller et al.

By the Court: Order Modifying Opinion and Denying Petition for Rehearing. The opinion filed on October 1, 2001, is ordered modified as follows: (See order.) All petitions for rehearing are denied. This modification does not change the judgment. Jones, P.J.

A094940 -- The People v. Eugene O'Brien. The judgment of conviction is affirmed. Stevens, J. We Concur: Jones, P.J., Simons, J. (Not for Publication.)